

Registered Domestic Partner (RDP) Issues

Subject: Substantive Changes Resulting From Change in Filing Status

Discussion: For many purposes, the Internal Revenue Code (IRC) treats a married couple as a single economic unit. The concept is embedded in the rules applicable for filing a joint return. In addition, where the IRC prescribes a specific dollar limit on a deduction, exclusion, or other rule, that dollar limit for a single taxpayer is the same as the dollar limit for two married persons who file a joint return and the dollar limit for a married person filing a separate return is equal to one-half of the dollar limit for other returns. In many cases, the treatment of a married couple is less favorable than the treatment provided to two single taxpayers. This treatment has been referred to as a marriage penalty.

Treating an RDP as a married person for California tax purposes has the substantive effect of reducing the dollar amount of various exclusions, deductions, etc. for California purposes. The provisions of the IRC identified below are applicable for California purposes. Until federal law allows RDPs to file a joint federal income tax return, there could be substantive differences in the treatment of the matters covered by these provisions for federal and California income tax purposes.

<u>Law</u>	<u>Description</u>
IRC 121	Exclusion of gain on sale of principal residence \$250,000/\$500,000 joint return exclusion
IRC 129	Dependent care assistance Maximum exclusion per year is \$5,000 (\$2,500 for MFS)
IRC 163(d)	Investment interest \$10,000 (\$5,000 MFS)
IRC 163(h)	Qualified residence interest \$1,000,000 acquisition loan, \$100,000 equity loan (MFS \$500,000, \$50,000)
IRC 179(b)	Expense depreciable property limit, MFS limit is 50%
IRC 194	Expensing of reforestation expenses Maximum deduction per year is \$10,000 (\$5,000 MFS)
IRC 221	Interest on education loan- for married person only deductible on joint return
IRC 469	Rental real estate passive loss \$25,000 max (\$12,500 MFS); phase out \$100,000 (\$50,000 MFS)
IRC 1044	Rollover of publicly traded securities gain into special small business investment company \$50,000/yr up to \$500,000 max (MFS \$25,000/yr, \$250,000 max)
IRC 1211	Maximum capital loss - \$3,000/yr (\$1,500/yr MFS)